

- V. Claims 104-106, drawn to a method of determining optimum incubation time, classified in class 435, subclass 332, for example.
- VI. Claims 107-116, drawn to a method of determining optimum incubation time, classified in class 435, subclass 2, for example.
- VII. Claims 117-125, drawn to a method of determining optimum incubation time, classified in class 435, subclass 374, for example.
- VIII. Claims 126-131, drawn to a method of determining time to separate male and female sperm, classified in class 435, subclass 333, for example.
- IX. Claims 132-142, drawn to a method for separating a selected population of cells from a sample of semen, classified in class 435, subclass 326, for example.

In response to the restriction requirement set forth in the Office Action mailed March 4, 2009, Applicants hereby provisionally elect Group I, claims 60-66, drawn to a method of treating semen, as set forth in the Office Action. Applicants respectfully traverse the requirements for restriction and election, and submit that the requirement is improper.

The Commissioner may require restriction if two or more independent and distinct inventions are claimed in a single application (37 CFR 1.142(a)). Applicants submit that the subject matter of the various groups represent different embodiments of a single, unifying inventive concept for which a single patent should issue. In the present case, the various groups are even all classified in the same class, i.e., class 435. The pending claims represent an intricate web of knowledge, continuity of effort, and consequences of this single, unifying concept, which merit examination of all claims in a single application. Therefore, it is respectfully submitted that it is improper to require that the subject matter of these groups be prosecuted in separate patent applications.

More particularly, a single, searchable, unifying aspect links all of the claims. This single, searchable, unifying aspect relates to methods of treating semen to

increase the relative number of sperm cells of a preferred sex type to increase the potential for conceiving an offspring of the preferred sex. Because the the claims are related in this way, they should be examined together.

With respect to the subject matter, Applicants submit that the search and examination of all claims will have substantial overlap, and no serious burden will result from searching and examining all claims in the same application. As the M.P.E.P. § 803 states:

If the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions.

That is, even if the above-enumerated groups of claims are drawn to distinct inventions, the Examiner must still examine the entire application on the merits because doing so will not result in a serious burden.

Given the robust and extensive computerized search engines and databases at the Office's disposal, the search and examination of all claims will not present a serious burden. This is especially true given that Groups I-IX share the same element of being drawn to methods of treating semen to increase the relative number of sperm cells of a preferred sex type to increase the potential for conceiving an offspring of the preferred sex and given that they all share the same classification, i.e., class 435.

In addition, examination has already been progressing for a substantial period for at least claims 60-95. At least, these claims and related claims should continue to be examined in this application.

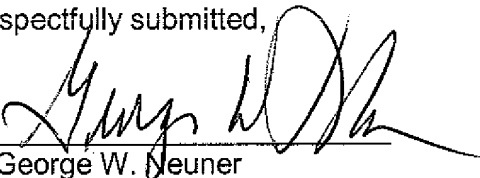
Applicants have elected, with traverse, the invention of Group I, claims 60-66, for further examination in the present application. The election of the invention of Group I is being made solely to comply with, and be fully responsive to, the restriction requirement. The right to file one or more divisional applications on non-elected subject matter is reserved.

CONCLUSION

Applicants submit this paper in response to the restriction requirement dated March 4, 2009, in the above-referenced patent application. Applicants believe that no fee is required for consideration and entry of this paper. Nevertheless, Applicants hereby authorize the Commissioner to charge any required fee/underpayment of a fee or credit any overpayment to Deposit Account No. **04-1105**.

Dated: March 26, 2009

Respectfully submitted,

By 

George W. Neuner

Registration No.: 26,964

EDWARDS ANGELL PALMER & DODGE
LLP

P.O. Box 55874

Boston, Massachusetts 02205

(617) 517-5538

Attorneys/Agents For Applicant